IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 218 of 2002
with
CIVIL APPLICATION NO.3434 OF 2002
with
CIVIL APPLICATION NO.4160 OF 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT ELECTRICITY BOARD

Versus

SHREE KHODIYAR ROLLING MILL

Appearance:

1. Appeal from Order No. 218/2002 with CA No.3434/2002
MR HS MUNSHAW for appellant/applicant Nos. 1-2
MR KH KAJI, for respondent/opponent No. 1

1. Civil Application No.4160 of 2002
MR KH KAJI, for applicant No.1
MR HS MUNSHAW for for opponent Nos.1-2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 27/12/2002

COMMON C.A.V. JUDGEMENT

This Appeal From Order is filed by the Gujarat Electricity Board against the order dated 18-3-2002 passed by the learned 3rd Jt. Civil Judge (SD), Bhavnagar below application Ex.5 in Special Civil Suit No.195 of 2001 whereby the following order is passed:

"The application is partly allowed.

It is hereby accordingly ordered that the plaintiff is entitled for the benefit of tariff as per HTP-4 tariff rate from which he has started making use of it after informing the defendant-Board.

It is further ordered that the plaintiff should be given a supplementary bill for six months prior to 03-03-2000 by calculating the slowness of the meter of 27.6793%.

The defendant-board is directed to replace the defective meter within a period of one month from today and replace the correct meter in place of the defective meter.

The plaintiff is directed to deposit the amount on receipt of supplementary bill within a period of seven days on receipt of the same.

The plaintiff shall pay the Court fees stamp as contended by the defendants on or before 12-4-2002.

With the above observation, application-Ex.5 stands disposed of."

2. The facts in short are that the plaintiff, a sole proprietorship firm doing business of rolling mill, which was having electric connection of 475 KVA bearing consumer No.23287 applied for the benefit of HTP-4 to the defendant Board as its rate is less than HTP-1 and electric supply was to consume with effect from October, 2000 between 10.00 p.m. and 6.00 a.m. According to plaintiff, they started enjoying the said benefit from January 2001 during night hours, but on 29-12-2000 official of the defendant Board noticed the incorrect

timing of the clock on the meter and a bill was served on them at HTP-1 tariff rate thereby he was required to pay excess amount during the months of June and July, 2001 and the right of recovery was kept reserved by the plaintiff. On 23-6-2001 since the clock of the meter was showing incorrect timing, they wrote a letter to the defendant board for checking the meter, however, since no action was taken by the board, they repeated their request. Thereafter, a notice was served on the defendant board by the plaintiff under sec.26(6) of the Electricity Act disputing the fact of defective meter and hence, a checking was carried out in presence of Electrical Inspector, plaintiff and defendants and the said meter was found to be running slow by 27.6793%. It is the say of the plaintiff that since the defendant No.1 failed to perform the statutory duty of keeping the meter, indicator or apparatus in correct running condition, the plaintiff would not be liable to pay for the hire of the meter under Sec.26 of the Indian Electricity Act. It is their further say that though the plaintiff was consuming the electricity as per HTP-4 tariff rate, they were required to pay bills at HTP-1 tariff rate for the months of June and July, 2001 amounting to Rs.1,16,549/- and Rs.1,17,575/- respectively which were in excess of the legitimate bill for the aforesaid periods at HTP-4 tariff rates and since the defendant board was to issue bills for the month of August, 2001 at HTP-1 rate, the plaintiff filed a suit for recovery of Rs.2,34,125/-along with an application for injunction.

2.1 It was stated by the defendants in their reply at Ex.18 that since the meter was found to be 31.8% slow, a bill for an amount of Rs.1,40,88,849.03 was served on the plaintiff after due checking. It was contended by the defendants that since the plaintiff violated the primary rules for consuming HTP-4 tariff rate, plaintiff was not entitled for the benefit of HTP-4 tariff rate. It was further contended that since the meter was running slow on inspection test on 3-8-2001 by 26.679%, however, after a joint inspection on 9-8-2001, when it was recording slow by 31.8%, a calculation was made from 23-7-1998 and hence, plaintiff was required to pay Rs.1,40,88,849.03 and, therefore, the suit be dismissed with costs.

2.2 A rejoinder was filed by the plaintiff stating that bill for an amount of Rs.1,40,88,849.03 was not received by them as alleged till filing of the suit and since the inspection by the Electrical Inspector is binding on the parties as the report of Electrical Inspector bears the signature of Electrical Inspector and

the plaintiff and also since the Electrical Inspector was not present when the checking was made by the defendant, the bill as stated in the reply is not binding to the plaintiff and hence, ad-interim relief may be granted in favour of the plaintiff.

2.3 Considering the rival submissions made on behalf of the respective parties, learned 3rd Joint Civil Judge (S.D.), Bhavnagar, passed the order dated 18-3-2002 reproduced hereinabove which is giving rise to prefer the present appeal.

3. Heard Mr.H.S.Munshaw, learned counsel for the appellants and Mr.K.H.Kaji, learned counsel for the respondent. They have mainly argued the same which they have contended in their respective pleadings and, therefore, it is not necessary to repeat the same at this stage.

4. Facts remain that the suit has been filed by the original plaintiff for refund of Rs.2,34,125.10 and also for giving a direction to the defendants to give the bill as per HTP-4 tariff rate instead of HTP-1 tariff rate and also restrain the defendants from issuing supplementary bill and from disconnecting the electric connection by way of injunction.

5. It is established from the record and from the reasoned order passed by the court below that plaintiff is having electric connection bearing consumer No.23287 of 470 KVA for running rolling mill. The respondent-original plaintiff had submitted an application for the benefit of HTP-4 in the month of October, 2000. For the purpose of getting HTP-4 benefit, consumer has to use electric connection between 10.00 p.m. and 6.00 p.m. The plaintiff had started using the said benefit from January 2001, but on 29-12-2000 official of the defendant Board noticed the incorrect timing of the clock on the meter and a bill was served on them at HTP-1 tariff rate and he was required to pay additional amount during the months of June and July, 2001. Since it came to the knowledge of the plaintiff that the clock of the meter was showing incorrect timing, plaintiff requested the defendant board for checking the meter, however, they did not pay any heed to it and hence, a notice was served on the defendant board under sec.26(6) of the Electricity Act and raised a dispute before the Electrical Inspector and checking was carried out accordingly. It was opined by the Electrical Inspector that said clock of the meter was found to be running slow by 27.6793% as a result of that, though the

plaintiff was using electricity on the basis of HTP-4 tariff rate, defendant board issued bills for the consecutive months of June and July, 2001 at the tariff rate of HTP-1. When the plaintiff came to know that the defendant board was planning to issue bills for the month of August, 2001 at HTP-1 rate, they filed a suit for recovery of Rs.2,34,125.10 along with an application for injunction.

6. It is also established from the reply of the defendants Ex.18 that bill for an amount of Rs.1,40,88,849.03 was served on the plaintiff since the meter was found to be 31.8% slow and though it was served well in advance, plaintiff has suppressed the above fact while filing the suit and according to the respondents, plaintiff has violated the primary rules for consuming HTP-4 tariff rate and, therefore, plaintiff is not entitled for the benefit of HTP-4 tariff rate. Since the clock of the meter was found to be running slow on inspection test carried out by the concerned officer on 3-8-2001 by 26.679%, bill for arrears of amount has been issued to the plaintiff amounting to Rs.1,40,88,849.03.

7. Learned counsel for the respective parties have taken me through the documents list Exs.4 and 22 and the judgments relied upon by them. They have also taken me through the judgments referred by the court below in its judgment. Before proceeding with the matter, it has been established prima facie that while deciding application Ex.5, court below has practically decreed the suit at this stage which cannot be done and hence, on this ground itself, interference in the said order is a must.

8. It is required to be noted that against the decision of the Electrical Inspector, there is a provision to approach the Energy Department of the State of Guajrat by way of appeal. Instead of doing so, plaintiff has entered into the court by filing a suit and, therefore also, court below ought not to have entertained the application Ex.5 at this juncture. Besides, it is too early to decide as to whether incorrect timing shown on the clock of the meter is a mechanical defect from the very beginning or whether it is a fraud committed by the consumer. Before deciding this aspect, court cannot come to any conclusion and pass any decree in favour of the plaintiff at the time of deciding application Ex.5. If anybody wants to avail any benefit under HTP-4, then one has to consume electric supply during the period from 10.00 p.m. to 6.00 a.m. If the clock on the meter shows otherwise, then it is required to be accepted by the parties unless the final

authority decides differently. Till then, direction on that basis cannot be given by the civil court when the specific remedy has been provided. It appears that though the bill has been issued, said fact has been suppressed by the plaintiff while filing the suit as is clear from the affidavit of the officers of the defendant-board though denied by the plaintiff by way of rejoinder. Inspite of availing the opportunity of preferring an appeal before the Energy Department of the State of Gujarat, present suit has been filed by the plaintiff which is premature to that extent and hence, interference is called for.

9. In the result, second para of the order dated 18-3-2002 passed by the learned 3rd Jt. Civil Judge (SD), Bhavnagar below application Ex.5 in Special Civil Suit No.195 of 2001 entitling the plaintiff for the benefit of tariff as per HTP-4 tariff rate is quashed and set aside. Rest of the order passed by the court below will remain unaltered and Court fees shall be paid accordingy by the plaintiff.

10. The plaintiff is directed to pay regularly the bill that may be issued by the respondent-board periodically.

11. The appeal, if any, filed by either of the parties pending before the Energy Department of the State of Gujarat, is directed to be disposed of within a period of one month from the date of receipt of copy of this order and decision thereof shall be communicated to the parties forthwith. The Appeal From Order stands disposed of accordingly.

12. The implemention of the present order qua quashing and setting aside second para of the order of the court below is stayed for a period of three months from the date of passing of this order or 15 days from the date of passing of the order by the Energy Department, State of Gujarat, whichever is earlier, for the purpose of availing appropriate remedy by the respective parties.

13. In view of the aforesaid order passed in main matter, Civil Application No.3434 of 2002 for stay stands disposed of accordingly. Ad-interim relief granted earlier stands vacated. Rule discharged.

14. In view of the above, no order is required to be passed in Civil Application No.4160 of 2002 filed by the original respondent-plaintiff for modifying the

ad-interim relief granted in Civil Application No.3434 of 2002.

(R.P.DHOLAKIA,J.)

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